

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AIRLINES DIVISION, *et al.*,

Plaintiffs,

vs.

ALLEGIANT TRAVEL COMPANY and
ALLEGIANT AIR, LLC,

Defendants.

Case No. 2:14-cv-00043-APG-GWF

ORDER

Motion to Compel - #98

This matter is before the Court on Defendants' Motion to Compel Production of Rule 30(b)(6) Deponent (#98), filed on September 5, 2014. Plaintiff filed its Response (#106) on September 22, 2014 and Defendants filed their Reply (#109) on September 29, 2014. The Court conducted a hearing on this motion on October 9, 2014.

BACKGROUND

The Court hereby incorporates the Background and Discussion set forth in Order (#119) regarding Defendant's Motion to Compel Responses to Written Discovery (#97). Plaintiff International Brotherhood of Teamsters, Airline Division/Airline Professionals Association of the International Brotherhood of Teamsters, Local Union No. 1224 ("IBT" or "Union") has brought this action seeking to enjoin Defendants Allegiant Travel Company and Allegiant Air, LLC ("Allegiant") from unilaterally eliminating or changing provisions of the Pilot Work Rules, which the Union alleges is a binding collective bargaining agreement that was negotiated by the Allegiant pilots' former collective bargaining representative, the Allegiant Air Pilots Advocacy Group (AAPAG). Allegiant denies that the AAPAG was the pilots' collective bargaining representative or

1 that the Pilot Work Rules constitutes a binding collective bargaining agreement. On July 22, 2014,
2 the District Judge granted the Union's motion for preliminary injunction. *Order* (#79).

3 Allegiant has served the Union with a Notice of Deposition (hereinafter "Notice") to take
4 the deposition of the Union in accordance with Fed.R.Civ.Pro. 30(b)(6). The Notice directed the
5 Union to designate one or more officers, directors, or managing agents, or other persons who
6 consent to testify on its behalf, to testify regarding 42 topics listed in the notice of deposition. The
7 Union has objected to the Notice on the grounds that many of the topics are over broad and
8 irrelevant. The Union has also objected to the Notice to the extent Allegiant seeks to discover
9 information protected from disclosure under the First Amendment associational privilege.

10 Topics 1 through 8 of the Notice request a deponent to testify about (1) IBT's campaign to
11 represent the Allegiant pilots; (2) the identity of all members of the IBT's organizing committee
12 during its campaign to represent the Allegiant pilots; (3) and (4) the methods of communication
13 used by IBT, or its organizing committee, to communicate with pilots during its campaign; (5) all
14 discussions or communications between IBT and members of its organizing committee relating to
15 IBT's campaign to represent the Allegiant pilots, "including but not limited to any and all
16 communications regarding or referencing the Pilot Work Rules ('PWR') or the Allegiant Air Pilots
17 Advocacy Group ('AAPAG');" (6) all documents provided to IBT by Allegiant pilots during its
18 campaign to represent the pilots, "including but not limited to any and all documents regarding or
19 referencing the PWR or AAPAG;" (7) all communications from IBT's organizing committee (or
20 members thereof) to Allegiant pilots relating to IBT's campaign to represent the Allegiant pilots,
21 "including but not limited to any and all communications regarding or referencing the PWR or
22 AAPAG;" and (8) all communications from IBT to the Allegiant pilots during the IBT's campaign
23 to represent the Allegiant pilots, "including but not limited to any and all communications
24 regarding or referencing the PWR or AAPAG." *Motion to Compel* (#98), *Exhibit 1*.

25 Topics 9-21 of the Notice request a deponent to testify about (9) and (10) discussions or
26 communications between IBT and AAPAG prior to and after IBT's certification by the NMB, (11)
27 IBT's representation application and other submissions filed with the NMB during its efforts to
28 become the representative of the Allegiant pilots; (12) communications from the NMB to the

1 parties during the IBT's efforts to become the representative of the Allegiant pilots and IBT's
2 response thereto; (13) IBT's position before the NMB regarding whether the Allegiant pilots were
3 already represented for purposes of collective bargaining; (14) IBT's position before the NMB
4 regarding whether the Allegiant pilots were subject to a collective bargaining agreement; (15)
5 IBT's claim in paragraph 8 of its complaint that AAPAG represented the Allegiant pilots for
6 purposes of collective bargaining under the RLA; (16) IBT's claim in paragraph 8 of its complaint
7 that AAPAG was voluntarily recognized by Allegiant as the elected and representative body of the
8 pilot group of Allegiant Air; (17) IBT's claim that AAPAG collected dues from its members and
9 represented their interests against Allegiant; (18) IBT's claim that the PWR was a collective
10 bargaining agreement; (19) IBT's claim in paragraph 14 of its complaint that Allegiant refused to
11 negotiate a system board of adjustment; (20) IBT's position regarding whether AAPAG was a
12 representative of the pilots under the Railway Labor Act ("RLA"), whether the PWR was a
13 collective bargaining agreement, whether PWR was enforceable, and/or whether Allegiant could
14 unilaterally make changes despite the PWR; and (21) the letter sent by the IBT to Allegiant on
15 September 11, 2012, including but not limited to the basis for the positions stated by IBT in that
16 letter. *Id.*

17 Topics 22-30 of the Notice request a deponent to testify about the injuries or damages
18 allegedly suffered by the Allegiant pilots as a result of the elimination or modification of provisions
19 in the Pilot Work Rules; the provisions of the PWR that were allegedly violated by Allegiant; IBT's
20 ability to compensate Allegiant pilots who are engaged in collective bargaining negotiations with
21 Allegiant; and how IBT-represented employees at other airlines are compensated for time spent in
22 negotiating collective bargaining agreements or conducting other business on behalf of IBT.

23 Topic 31 of the Notice requests a deponent to testify about items sought in Allegiant's
24 Request for Production No. 9 which is addressed in Order (#119). Topic 32 requests a deponent to
25 testify about all disputes or appeals ever filed by AAPAG, IBT or any individual pilot pursuant to
26 Section 8 (the Open Door Policy) of the PWR, any response by Defendants to such disputes or
27 appeals, and any correspondence between AAPAG or IBT and pilots (individuals or groups) related
28 to those disputes or appeals. Topic 33 requests a deponent to testify about the source and substance

1 of any and all information, documents or data that came into the possession or control of IBT
2 between June 29, 2012 and September 11, 2012 that led to or related to IBT's change of position
3 regarding whether the Allegiant pilots were previously represented by AAPAG and whether the
4 PWR is a collective bargaining agreement, including when and how such information, documents
5 and data came into IBT's possession, and any discussions relating to such information, documents
6 and data.

7 Topics 34-39 of the Notice request a deponent to testify about matters relating to IBT's
8 efforts to be certified as the collective bargaining representative for the pilots of Horizon Airlines.

9 Topics 40-42 of the Notice request a deponent to testify about the documents produced by
10 IBT in response to Allegiant's requests for production of documents, IBT's responses and
11 objections to Allegiant's interrogatories, and IBT's responses and objections to Allegiant's requests
12 for admissions.

13 DISCUSSION

14 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that a party may obtain
15 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.
16 Relevancy under the rule is liberally construed. *Philips v. Clark County School District*, 2012 WL
17 135705, *4 (D.Nev. 2012), citing *E.E.O.C. v. Caesars Entertainment, Inc.*, 237 F.R.D. 428, 431-32
18 (D.Nev. 2006). The party opposing discovery has the burden of showing that the discovery is
19 overly broad, unduly burdensome or not relevant. *Graham v. Casey's General Stores*, 206 F.R.D.
20 251, 253-4 (S.D.Ind. 2000). To meet this burden, the objecting party must specifically detail the
21 reasons why each request is irrelevant. *Id.*, citing *Schaap v. Executive Indus., Inc.*, 130 F.R.D. 384,
22 387 (N.D.Ill. 1990); *Walker v. Lakewood Condominium Owners Assoc.*, 186 F.R.D. 584, 587
23 (C.D.Cal. 1999). When a request for discovery is overly broad on its face or when relevancy is not
24 readily apparent, however, the party seeking the discovery has the burden to show the relevancy of
25 the request. *Rezaq v. Nalley*, 264 F.R.D. 653, 656 (D.Colo. 2010).

26 The claims asserted and the relief sought by the Union in this action are limited. It seeks an
27 injunction to prevent Allegiant from eliminating or modifying provisions of the Pilot Work Rules
28 ("PWR") while the Union and Allegiant are engaged in negotiations for a collective bargaining

1 agreement under provision of the Railway Labor Act. The Union also seeks compensation or
2 restitution for those pilots who have allegedly suffered injury as a result of Allegiant's elimination
3 or modification of the Pilot Work Rules. In its defense to the Union's action, Allegiant asserts that
4 AAPAG was not the pilots' collective bargaining representative within the meaning of the Railway
5 Labor Act and that the Pilot Work Rules did not and do not constitute a binding collective
6 bargaining agreement between Allegiant and the AAPAG, as representative of the pilots. These are
7 the claims and defenses on which discovery is appropriate and with respect to which Allegiant is
8 entitled to conduct a Rule 30(b)(6) deposition of the Union.

9 This action does not provide a legitimate basis for Allegiant to engage in a broad inquiry
10 into the Union's campaign to represent the Allegiant pilots, including an inquiry into any and all
11 communications by or among the Union, the AAPAG and the Allegiant pilots. Topics 1 through 8
12 of the Notice are clearly over broad and irrelevant to the extent that they are not restricted to the
13 claims and defenses at issue in this action. The Court therefore denies Allegiant's motion to
14 compel with respect to topics 1-8, to the extent the inquiry under those topics is not specifically
15 related to the claims and defenses at issue in this action.

16 Topics 9-21 and 31-33 are relevant to the extent they inquire into the basis for the Union's
17 assertions that the AAPAG was the pilots' collective bargaining representative or that the Pilot
18 Work Rules was a binding collective bargaining agreement. Topics 22-30 are also relevant to the
19 claims and defenses in this action and a proper subject of the Rule 30(b)(6) deposition. To the
20 extent the parties have reached agreement on the scope of the damages or restitution that the Union
21 seeks on behalf of individual pilots, however, the inquiry under these topics may be limited by that
22 agreement. Allegiant may also appropriately question the Union about its answers to
23 interrogatories, responses to requests for production of documents or responses to requests for
24 admissions – Topics 40-42. The Union is therefore required to produce a deponent(s) to testify on
25 these topics as they relate to the claims and defenses in this action.

26 In its defense, Allegiant has cited allegedly contradictory positions taken by the Union,
27 before or after its certification by the NMB as the pilots' collective bargaining representative, as to
28 whether the AAPAG was the pilots' collective bargaining representative or the Pilot Work Rules

1 was a binding collective bargaining agreement. Although the District Judge was not persuaded by
2 this evidence in ruling on the motion for preliminary injunction, *see Order Granting Motion for*
3 *Preliminary Injunction (#79)*, pg. 12, Allegiant is entitled to depose the Union with respect to its
4 statements or positions on these issues. Allegiant, however, also seeks to depose the Union in
5 regard to positions it allegedly took during an organizing campaign of Horizon Airlines pilots or
6 during proceedings before the National Mediation Board in that matter. The apparent purpose of
7 this discovery is to again show that the Union has taken contradictory positions. The Court finds
8 that positions taken by the Union in the Horizon matter are irrelevant to the claims and defenses in
9 this action. The Union therefore is not required to produce a deponent to testify about the Horizon
10 matter. This decision, however, is predicated on the Union not attempting to introduce evidence
11 relating to the Horizon matter in support of its position in this case.

12 As the Court stated in Order (#119), the First Amendment associational privilege precludes
13 Allegiant from generally inquiring into the identity of individual Allegiant pilots who were or are
14 members of the AAPAG or the Union, or who have attended organizing or membership meetings
15 or taken positions in support of the Union or the AAPAG. The privilege, however, does not bar
16 Allegiant from obtaining answers to questions relating the Union's claims for restitution or
17 damages on behalf of individual pilots, or from inquiring into specific instances in which Allegiant
18 allegedly violated a pilots' rights under the Pilot Work Rules, including the identity of the pilots
19 whose rights were violated. Nor does it preclude Allegiant from obtaining information which
20 identifies officers or representatives of AAPAG or the Union who have made statements on behalf
21 of those entities relevant to the issues in this case. The validity of objections based on the First
22 Amendment privilege must ultimately be determined on a question-by-question basis.

23 Accordingly,

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1 **IT IS HEREBY ORDERED** that Defendants' Motion to Compel Production of Rule
2 30(b)(6) Deponent (#98) is **granted**, in part, and **denied**, in part, in accordance with the foregoing
3 provisions of this order.

4 DATED this 13th day of November, 2014.

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7 GEORGE FOLEY, JR.
8 United States Magistrate Judge
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